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E-Filed 2/26/15

8 Attorney for Debtor in Possession

9 **UNITED STATES BANKRUPTCY COURT**

10 **DISTRICT OF NEVADA**

11 IN RE: CASE NO. 14-51643-BTB
12 JOHN DAVIS TRUCKING COMPANY, CHAPTER 11
13 INC.,
14 Debtor in Possession.

**MOTION FOR ORDER AUTHORIZING
SALE OF PERSONAL PROPERTY AND
EMPLOYING RITCHIE BROS.
AUCTIONEERS; PAYMENT OF
COMMISSION**

**Hearing Date: OST Pending
Hearing Time:**

15 _____/
16 John Davis Trucking Company, Inc. ("JDT") requests an order authorizing the sale
17 of personal property utilizing the services of Ritchie Bros. Auctioneers for an auction to be
18 conducted on March 17, 2015 in Lake Point, Utah. The personal property is equipment to
19 be sold, consisting of a total of 16 tractors and trailers and one road grader ("Equipment").
20 JDT also requests authority to employ Ritchie Bros. Auctioneers to auction the Equipment
21 and to be paid a commission of 9.5%. This Motion is in accordance with 11 U.S.C. §§
22 327(a) and 363(a) and (b), F.R.Bankr.P. 2002, 6004 and 9014 and is supported by the
23 separately filed Declarations of Shane Davis and Brian Barger. JDT requests the Court take
24 judicial notice of the papers on files in this case.

25 **JURISDICTION**

26 1. This Court has jurisdiction over this matter by reason of 28 U.S.C. §§ 157(b) and
27 1334(a). This is core matter by reason of 28 U.S.C. § 157(b)(2)(M).

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FACTS

2. JDT filed its voluntary chapter 11 petition on September 29, 2014 ("Petition Date").

3. JDT operates a trucking and transportation services business based in Battle Mountain, Nevada. At the Petition Date, JDT employed more than 40 people in the Battle Mountain area, including drivers, mechanics and equipment service personnel, and office staff. JDT owns approximately 40 truck/tractor units and 70 trailers. JDT's primary customer is MI Swaco for which JDT hauls barite, a mineral used in the well drilling industry. JDT also provides hauling services for NV Energy and delivers aggregate for a number of customers.

4. JDT has identified 16 pieces of Equipment it wishes to liquidate. The Equipment is owned outright and not subject to any security interest. JDT has determined that this Equipment is not necessary for its continued operations and will not impair its ability to continue with its obligations to its primary customer, MI Swaco or any other customers. Copies of the titles to the 15 pieces of certificated Equipment are attached to the Shane Davis Declaration as **Exhibit A**. The Volvo road grader to be sold is not required to be titled. A copy of the proposed contract with Ritchie Bros., attached to the Shane Davis Declaration as **Exhibit B**, includes a list of the Equipment to be sold at auction.

5. JDT desires to utilize the auction services of Ritchie Bros. Auctioneers ("Ritchie Bros."), for liquidation of this Equipment. Ritchie Bros. is one of the largest, if not the largest, equipment auctioneer in the United States. See, www.rbauction.com. JDT desires to utilize the services of Ritchie Bros. because of its expertise in readying equipment for sale to achieve the best prices under the market conditions.

6. JDT will transport the Equipment to Lake Point, Utah for the auction to be held on March 17, 2015. Ritchie Bros. has agreed to conduct the auction of the Equipment for a commission of 9.5% which is less than its standard 15%.

7. JDT believes it would be difficult to sell the Equipment where it is currently located, i.e., Battle Mountain, Nevada. JDT believes that an auction conducted by Ritchie

1 Bros. at a location where prospective purchasers can inspect hundreds or even thousands of
 2 items of construction related equipment will yield the best possible sale price under the
 3 current market conditions.

4 DISCUSSION

5 Sales of property other than in the ordinary course of business of a debtor are to be
 6 approved only after notice and a hearing. § 363(a) and (b). A debtor is entitled to utilize its
 7 business judgment in determining the merits of a sale such as the one contemplated in this
 8 Motion. The rule is as stated in Southwestern Media, Inc. v. Rau, 708 F.2d 419 (9th Cir.
 9 1983):

10 The decision concerning the form of sale therefore rested within the business
 11 judgment of the trustee. Liability will not be imposed for the exercise of such
 12 judgment, absent negligence. See Mosser v. Darrow, 341 U.S. 267, 272-73, 95 L.
 Ed. 927, 71 S. Ct. 680 (1951); In re Cochise College Park, Inc., 703 F.2d 1339, 1357
 (9th Cir. 1983).

13 708 F.2d at 425. With certain exceptions not applicable here, § 1107(a) gives a debtor in
 14 possession all of the rights and powers of a trustee. Thus, the principals of JDT are entitled
 15 to exercise their business judgment in determining how best to liquidate the Equipment to
 16 obtain a market sale price.

17 JDT also requests authority to employ Ritchie Bros. in accordance with § 327(a) and
 18 F.R.Bankr.P. 2014. Ritchie Bros. is a well known construction equipment auctioneer and is
 19 well qualified to market and sell this Equipment. JDT believes that a sale commission of
 20 9.5% is reasonable and somewhat below a standard sale commission for this type of
 21 Equipment. JDT also believes that Ritchie Bros. does not hold an interest adverse to the
 22 JDT chapter 11 estate and is disinterested as that term is defined in § 101(14). See,
 23 separately filed Declaration of Brian Barger.

24 Finally, JDT requests that the Order granting this Motion provide for a waiver of the
 25 14 day stay as permitted by F.R.Bankr.P. 6004(h).

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CONCLUSION

Based upon the foregoing, JDT requests an order authorizing the employment of Ritchie Bros. Auctioneers to sell the Equipment at auction for a commission of 9.5%. JDT also requests an order authorizing the sale of the Equipment by auction as stated herein. Finally, JDT requests a waiver of the 14 day stay under F.R.Bankr.P. 6004(h).

DATED: February 26, 2015.

HARTMAN & HARTMAN

/S/ Jeffrey L. Hartman
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